
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
JMK Communications, Inc.)	File Number: EB-07-HL-099
)	
Licensee of AM Broadcast Station KREA)	NAL/Acct. No.: 200732860001
Honolulu, HI)	FRN: 0007309503
Facility ID 39773)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: August 7, 2007

By the Resident Agent, Honolulu Resident Agent Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that JMK Communications, Inc. ("JMK"), licensee of AM Broadcast Station KREA, in Honolulu, Hawaii, apparently willfully and repeatedly violated Section 73.44(b) of the Commission's Rules ("Rules")¹ by failing to ensure that emissions removed by more than 75 kHz from the KREA fundamental frequency of 1540 kHz are attenuated 80 dB below the unmodulated carrier level. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),² that JMK is apparently liable for a forfeiture in the amount of four thousand dollars (\$4,000).

II. BACKGROUND

2. On April 12, 2007, the Honolulu Resident Agent Office ("Honolulu Office") received a complaint alleging that an AM broadcast station on 1540 kHz was causing interference on 1810 kHz and that the interference was a result of spurious emissions. 1810 kHz is authorized for primary use by stations in the Amateur Radio Service.³

3. On April 17, 2007, Honolulu agents inspected AM Broadcast Station KREA. The agents employed a calibrated spectrum analyzer and an external magnetically mounted antenna to measure spurious emissions from KREA on 1810 kHz, attenuated -60 dB referenced to the KREA carrier on 1540 kHz.

4. A Notice of Violation ("Notice") was issued to JMK Communications, Inc., licensee of AM Broadcast Station KREA, on April 26, 2007, citing JMK for violation of Section 73.44(b) of the Rules.⁴ JMK replied to the Notice via letter dated May 15, 2007. In its response, JMK acknowledged the

¹ 47 C.F.R. § 73.44(b).

² 47 U.S.C. § 503(b).

³ 47 C.F.R. §§ 97.301, 2.106.

⁴ 47 C.F.R. § 73.44(b). As KREA is licensed to operate at 5000 watts, the emissions are required to be attenuated 80 dB.

spurious emissions, and stated that they had remedied the problem.

5. On May 22, 2007, a Honolulu agent again inspected AM Broadcast Station KREA. The Honolulu agent employed a calibrated spectrum analyzer and an external magnetically mounted antenna and measured spurious emissions from KREA on 1810 kHz, attenuated -59 dB referenced to the KREA carrier on 1540 kHz. The agent spoke to the local KREA contract engineer, who stated that the installed filtering had failed and needed to be replaced. The agent also spoke with the individual who had designed and installed the rejection filters for the station and he confirmed that the installed filters had failed, and stated that further repairs were pending.

6. On July 9, 2007, a Honolulu agent again inspected AM Broadcast Station KREA. The agent employed a calibrated spectrum analyzer and an external magnetically mounted antenna and measured spurious emissions from KREA on 1810 kHz, attenuated -55 dB referenced to the KREA carrier on 1540 kHz.

7. On July 18, 2007, the Honolulu Office received another e-mail complaint alleging interference to Amateur Radio Service operations on 1810 kHz. The complaint stated that the spurious emissions have continued unabated.

III. DISCUSSION

8. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.⁵ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁶

9. Section 73.44(a) of the Rules requires that "[t]he emissions of stations in the AM service shall be attenuated in accordance with the requirements specified in paragraph (b) of this section."⁷ Section 73.44(b) of the Rules requires that "[e]missions removed by more than 75 kHz (from the carrier) must be attenuated at least $43 + 10 \log(\text{Power in watts})$ or 80 dB below the unmodulated carrier level, whichever is the lesser attenuation...."⁸ As AM Broadcast Station KREA is licensed to operate on 1540 kHz, at 5000 watts, the emissions on 1810 kHz must be attenuated 80 dB. The frequency 1810 kHz is not assigned for broadcast use, and the station's emissions on 1810 kHz are impacting primary Amateur Radio Service use. On April 26, 2007, JMK received a Notice from the Honolulu Office notifying JMK that it is was operating in violation of Section 73.44(b) by failing to ensure that its emissions on 1810 kHz were attenuated 80 dB. Two subsequent investigations by Honolulu agents, on May 22, 2007, and July 9, 2007, revealed KREA was producing spurious emissions on 1810 kHz, attenuated -59 dB, and -55 dB,

⁵ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁶ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

⁷ 47 C.F.R. § 73.44(a).

⁸ 47 C.F.R. § 73.44(b).

respectively. JMK was notified of its violation of Section 73.44(b), but failed to correct it, therefore, its violation is willful. The violation occurred on more than one day, therefore, it is repeated. Based on the evidence before us, we find that JMK apparently willfully and repeated violated Section 73.44(b) of the Rules by failing to adequately attenuate the spurious emissions on 1810 kHz.

10. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("*Forfeiture Policy Statement*"), and Section 1.80 of the Rules, the base forfeiture amount for unauthorized emissions is \$4,000.⁹ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.¹⁰ Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, we conclude that JMK is apparently liable for a \$4,000 forfeiture.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, JMK Communications, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of four thousand dollars (\$4,000) for violations of Section 73.44(b) of the Rules.¹¹

12. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, JMK Communications, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

14. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, Honolulu Resident Agent Office, POB 971030, Waipahu, Hawaii 96797 and must include the NAL/Acct. No. referenced in the caption.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture under an installment plan should be sent to: Associate Managing Director – Financial Operations, Room

⁹ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

¹⁰ 47 U.S.C. § 503(b)(2)(E).

¹¹ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 73.44(b).

Federal Communications Commission

1A625, 445 12th Street, S.W., Washington, D.C. 20554.¹²

17. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to JMK Communications, Inc.

FEDERAL COMMUNICATIONS COMMISSION

John R. Raymond
Resident Agent,
Honolulu Resident Agent Office
Western Region
Enforcement Bureau

¹² See 47 C.F.R. § 1.1914.